

Legislative Deliberation and the Rhetorical Foundations of Democracy:

A Preface to an Assessment of the Quality of Senate Deliberation

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Introduction: Dialectic, Deliberation, and Democracy

Except for those whose faith leads them to believe in the possibility of prophetic revelation, humanity has only discovered a single means for discerning Truth; namely, dialectical engagement.¹ I capitalize the word “Truth” for a reason – a reason seldom discussed, though presupposed in certain political circles and in an ever-shrinking number of conservative university philosophy departments. Following the dissemination of the writings of Friedrich Nietzsche, philosophical “truth” assumed a degree of relativity in Western thought, which our postmodern emphasis on multiculturalism and democratic egalitarianism has only served to accentuate. Indeed, Nietzsche’s claim that there are no true facts, only subjective interpretations,

¹ Regarding the possibility of prophetic revelation, Benedict de Spinoza writes: “Prophecy, or revelation, is sure knowledge revealed by God to man. A prophet is one who interprets the revelations of God to those who are unable to attain to sure knowledge of the matters revealed, and therefore can only apprehend them by simple faith.” Spinoza, Benedict de. A Theologico-Political Treatise: A Political Treatise. Translated by R.H.M. Elwes. New York: Dover Publications, 1951. P. 13. Aristotle, on the other hand, writes the following regarding dialectical engagement: “Persuasion occurs through the arguments [logoi] when we show truth or the apparent truth from whatever is persuasive in each case.” Aristotle. On Rhetoric: A Theory of Civic Discourse. Translated by George A. Kennedy. New York: Oxford University Press, 1991. P. 39. Truth revealed through divine inspiration and truth revealed through dialectical engagement are distinguished by their respective sources: whereas prophetic truth is exogenous, or revealed from without, truth revealed through dialectical engagement is conceived through distinctly human cognitive processes. In other words, prophetic truth necessarily presupposes a divine source, but true knowledge attained through dialectical engagement is the product of purely human deliberative discourse. Aristotle writes: “But the subjects of deliberation are clear; and these are whatever, by their nature, are within our power and of which the inception lies with us.” Ibid. P. 53.

has attained the status of common wisdom in American political thought, although in a slightly distorted and diluted form.²

The notion of Truth, however, signifies one's belief in the existence of an eternal and immutable moral code.³ Indeed, for those who believe in the existence of Truth, and in the possibility of its apprehension, the moral poles of right and wrong are as real and as constitutive of the universe as the structures and the forces that define the realms of chemistry, physics, and astronomy. In other words, our thoughts and our actions as moral beings are governed by laws not unlike the laws that govern the rotation of the planets, the birth of stars, and the expansion of the universe. Furthermore, the philosophical and theological belief that our nature as teleological beings causes us to aspire toward that Truth underpins the great philosophical and religious works of early Occidental thought, from Plato and Aristotle through St. Thomas Aquinas.

As Professor Allan Bloom notes with great eloquence and erudition in The Closing of the American Mind, humankind's ontological tendency to aspire toward Truth has taken at least two rhetorical forms in the history of Western political philosophy: Socratic dialecticism and Marxist dialecticism.⁴ The ultimate difference between these two types of dialecticism rests in each philosopher's attitude toward the possibility of attaining Truth. For Socrates, each debate ended in doubt rather than in resolution. For Marx, however, man's ascension toward Truth was inevitable, the necessary end of humankind's march through history. Bloom writes:

Socratic dialectic takes place in speech and, although drawn forward by the search for synthesis, always culminates in doubt. Socrates' last word was that he knew nothing. Marx's dialectic takes place in deed and culminates in the classless society, which also

² Nietzsche, Friedrich. Nachlass (Nietzsche's posthumously published notebooks). 1900. "The Nietzsche Channel." Retrieved from the Internet 13 December 2003. <http://thenietzschechannel.fws1.com/>. For an interesting, though admittedly partial, examination of the "Nietzscheanization" of American political thought, see: Bloom, Allan. The Closing of the American Mind. New York: Simon and Schuster, 1987. P. 139-240.

³ An apologia for the existence of an unchanging moral code can be found in: Lewis, C.S. The Abolition of Man. New York: HarperCollins Publishers, Inc, 1974.

⁴ Bloom, Allan. The Closing of the American Mind. New York: Simon and Schuster, 1987.

puts an end to theoretical conflicts, now known as ideologies. Historical dialectic provides an absolute ground and happy resolution for our relative life-styles.⁵

Although the concept of democratic deliberation antedates Marx by over two millennia, deliberative democrats nonetheless beat a middle path between Socrates' unwavering confidence in humanity's inability to discern Truth and Marx's historical determinism. Indeed, the deliberative democrat believes that rhetorical exchange can promote moral discernment, while nonetheless refusing to posit the inevitability of revelation or even the possibility of attaining absolute certainty on any given matter. Although the propriety of the decisions reached through rhetorical deliberation is thus somewhat ambiguous, the deliberative process is tacitly considered sufficiently edifying by those who live within a democratic society to legitimize democratic outcomes. Indeed, the American political system is so rooted in the rhetorical tradition that laws are considered binding on all citizens even though they are enacted following a period of deliberation by only a relatively tiny number of the American citizenry's elected representatives. In other words, the rule of law in American society finds its strength in the discursive legitimacy of the legislative process, despite the fact that only a small percentage of Americans actually engage in the rhetorical deliberation that legitimizes the entire democratic enterprise.⁶

⁵ Ibid. P. 229.

⁶ Although deliberation thus legitimizes the democratic process, the problem of economy must not be overlooked. If democratic "outcomes are legitimate to the extent they receive reflective assent through participation in authentic deliberation by all those subject to the decision in question," deliberative democracy "is, on the face of it, impossible." Dryzek, John S. "Deliberative Economy and Discursive Legitimacy." 5 December 1999. Presented at "Deliberating about Deliberative Democracy," University of Texas, Austin. 4-6 February 2000. Retrieved from the Internet 7 November 2003. <http://www.la.utexas.edu/conf2000/papers/DeliberativeEconomy.pdf>. P. 1. Indeed, the sheer size of the American populace makes it impossible for government officials to receive the "reflective assent" of even a *majority* of American citizens on legislative initiatives, let alone *everyone* "subject to the decision in question." Moreover, according to Bruce Ackerman, society-wide deliberation has only occurred on three occasions in the political history of the United States: the ratification of the Constitution, the ratification of the Civil War amendments to the Constitution, and the enactment of President Franklin D. Roosevelt's New Deal legislation. Ackerman, Bruce. We the People I: Foundations. Cambridge: Harvard University Press, 1991. Although the American system of representation was designed to remedy this apparent obstacle to democratic legitimacy, the electoral process ultimately only serves to disguise the problem. Dryzek writes: "[S]uch an easy assimilation to representative democracy cannot straightforwardly deliver legitimacy in a way that can satisfy deliberative democrats. For to do so, election campaigns themselves would have potentially to involve the deliberation of all. So

It is thus critically important that our nation's political institutions retain the capacity to sustain meaningful rhetorical deliberation over the ever-expanding array of international and domestic issues confronting our nation. Various trends in American politics, however, including the polarization and homogenization of America's two primary political parties, the expansion in Congress's workload, and the general decline of civility in Congress, have led many scholars to speculate that the quality of rhetorical deliberation in the United States Congress is in decline. Such speculation is especially disturbing when it is in regards to the United States Senate, a body specifically designed to elevate deliberation and careful reasoning above the clamor of electoral politics and constituent demands. In this paper, we shall take a closer look at the role played by democratic deliberation within our system of government, we shall examine the history of rhetorical deliberation in the United States Senate, and we shall develop a framework for assessing the quality of Senate deliberation, therein exposing the rhetorical foundation of the American democratic system and laying the foundation for future empirical studies into the quality of rhetorical deliberation in the United States Senate.

Democratic Deliberation in the United States

In a philosophical sense, the democratic institutions that comprise our nation's federal government are fundamentally liberal, in that the deliberative process in no way presupposes a

the problem of scale reappears, only this time in a slightly different location, and a legitimacy claim cannot be established at one remove by appeal to the electoral process." P. 4-5. Although this apparent flaw in the American democratic system deserves our attention, a more thorough examination of the problem of deliberative economy is not within the scope of this paper, and must therefore be found elsewhere. See, for example: Rawls, John. Political Liberalism. New York: Columbia University Press, 1993; Dryzek, John S. "Deliberative Economy and Discursive Legitimacy." 5 December 1999. Presented at "Deliberating about Deliberative Democracy," University of Texas, Austin. 4-6 February 2000. Retrieved from the Internet 7 November 2003. <http://www.la.utexas.edu/conf2000/papers/DeliberativeEconomy.pdf>; and Goodin, Robert E. "Democratic Deliberation Within." Presented at "Deliberating about Deliberative Democracy," University of Texas, Austin. 4-6 February 2003. Retrieved from the Internet 15 December 2003. <http://www.la.utexas.edu/conf2000/papers/DemDeliberationWithin.pdf>.

particular substantive theory of justice. In the words of Professor David Estlund of Brown University:

[Deliberative democrats doubt that it is] ever proper for a political theorist to preempt... the conclusions of a free and equal democratic discussion about justice. Instead, political philosophers should leave all questions of substantive justice to politics. This would leave only the task of prescribing a legitimate political process without presupposing the correctness or error of any particular substantive position. The new political ideal, after justice, has come to be deliberative democracy itself.... From the idea that political theory ought not say what democracies should decide, there has been a largely undefended shift to the philosophically deeper proposition that there *is no standard* of what democracies should decide, except, that is, whatever they actually do decide when functioning properly.⁷

The American political system is thus grounded in the philosophically liberal belief that moral Truth is neither the sole province of a line of divinely inspired kings nor the source of any particular culture or tradition.⁸ The theoretical goal of the American democratic process,

⁷ Estlund, David. "Democratic Authority: Toward a Philosophical Framework." 17 January 2000. Presented at "Deliberating about Deliberative Democracy," University of Texas, Austin. 4-6 February 2000. Retrieved from the Internet 7 November 2003. <http://www.la.utexas.edu/conf2000/papers/DemocraticAuthority.pdf>. P. 3. The United States Constitution acknowledges the importance of unfettered deliberation in Congress, elevating the substance of Congressional debate above external legal reproach. According to Article I, Section 6 of the Constitution, "for any Speech or Debate in either House, they [members of Congress] shall not be questioned in any other Place."

⁸ The role tradition plays in shaping human identity and defining the bounds of discourse, however, requires our attention. Indeed, if Michel Foucault's classic analysis of human discourses as constellations of power/knowledge relationships is correct, democratic deliberation is nothing more than a meaningless illusion that blinds us to our own captivity to the words we use in daily speech. As John Dryzek notes, however, the "de-traditionalization" of modern democratic society would seem to make reflective choice across competing discourses possible. The dialectical process is thus arguably capable of resolving the problems of power and tradition that occur both within and between human discourses. Dryzek writes: "Now, followers of Michel Foucault treat discourses as power/knowledge formations that condition – to the extent of imprisoning – human subjects. It is, then, hard to be a Foucauldian *and* a deliberative democrat. Still, I think it is useful to begin with a very loosely Foucauldian conception of discourses while recognizing that reflective choice across discourses is indeed possible (and this is where deliberation can come in). Foucault himself came close to accepting this possibility toward the end of his life. And though they do not use the 'discourse' terminology, the notion of a reflexive modernity as advanced by Ulrich Beck and Anthony Giddens suggests that such choices across discourses become increasingly possible and likely with the 'de-traditionalization' of society (see, for example, Beck, Giddens, and Lash, 1994). The traditions that can be called into question include those that once took economic growth and technological change as inevitable and benign, as well as older traditions of deference and religious authority. Indeed, the possibility of such choices becomes the defining feature of modernity proper (as opposed to the semi-modernity of industrial society). Which ought to augur well for the prospects for deliberative democracy.... Identity differences should not be allowed to warrant a relativism in which deliberation is impossible and identities are only asserted. Rather, we should remember that any identity is tightly bound up with a discourse. The possibility for deliberation is retained to the extent that reflective interchange is possible across the boundaries of different discourses – which, I would argue once again, is the defining feature of a reflexive modernity." Dryzek, John S. "Deliberative Economy and Discursive

however, has always been the promotion of the common good (the *res publica*) – a political goal that necessarily originates in a moral judgment. Although the existence of a transcendent moral Truth can be contested, as it has been with renewed vigor ever since the Enlightenment, our nation’s founders nonetheless appear to have believed in the existence of natural justice (despite the fact that the very government they were establishing was based on the assumption that no one has the ability or the authority to explain what the laws of natural justice actually entail).⁹ Moreover, the deliberative process, which was both utilized by our nation’s founders and institutionalized in our form of government, presupposes the legitimacy of dialectical deliberation as a means for discerning Truth and as a prerequisite for just lawmaking. Indeed, if the Constitution’s framers did not believe that persuasion through appeals to reason in the form of rhetorical argumentation promoted just lawmaking, they would have designed a much simpler and more expedient legislative system based entirely on balloting, without allowing for a period of potentially lengthy deliberation prior to each vote. As Aristotle notes, however, rhetorical

Legitimacy.” 5 December 1999. Presented at “Deliberating about Deliberative Democracy,” University of Texas, Austin. 4-6 February 2000. Retrieved from the Internet 7 November 2003. <http://www.la.utexas.edu/conf2000/papers/DeliberativeEconomy.pdf>. P. 11,14. See also: Foucault, Michel. *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*. New York: Pantheon Books, 1980. P. 92-108.

⁹ The relationship between *physis*, or natural law, and *nomos*, or human law, has been shrouded in ambiguity since the writings of the ancient Greek philosopher Heraclitus, and this relationship was undoubtedly in the minds of our nation’s founders at the time of the Revolutionary War. Indeed, the existence of a relationship between natural law and conventional law is presumed in the American Declaration of Independence, which opens with the following introduction: “When in the Course of human events, it becomes necessary for one people to dissolve the *political* bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the *Laws of Nature and of Nature’s God* entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation” [emphasis added]. “The Declaration of Independence of the Thirteen Colonies.” Although those signing the Declaration of Independence were philosophically liberal, they considered disharmony between the dictates of natural law and the demands of conventional law reasonable grounds for political separation from Great Britain. Confusion and debate over the relationship between human law and natural law within the context of the United States Constitution, however, has persisted long into our nation’s development, finding expression in such writings as the landmark United States Supreme Court case *Calder v. Bull* (3 Dall. 386. 1798.) and Martin Luther King, Jr.’s famous “Letter from a Birmingham Jail” (King, Martin Luther, Jr. “Letter from a Birmingham Jail.” 16 April 1963. Retrieved from the Internet 6 January 2001. <http://www.almaz.com/nobel/peace/MLK-jail.htm>).

deliberation promotes knowledge, and “as knowledge prevails, so does truth.”¹⁰ Thus, despite the liberal foundations of the American system of government, those who wrote and ratified the Constitution implicitly presupposed the existence of natural justice in establishing a republican form of government originating in and sustained through the rhetorical process.

In the words of Colleen Grogan and Michael Gusmano, democratic governance has never simply “meant rule by popular will. Deliberation has always played a prominent role in democracy because it appeals to reason rather than will.”¹¹ Indeed, the belief that dialectical engagement promotes moral discernment and just lawmaking can be traced all the way back to the early democratic systems of antiquity. In the fifth century BC, for example, Pericles is recorded as having stated that his fellow Athenians viewed democratic discussion not “as a stumbling-block in the way of action,” but as “an indispensable preliminary to any wise action at all.”¹² Of course, the observation that deliberative rhetoric “has always played a role” in history’s various democratic societies does not mean that deliberation is a necessary prerequisite for the existence of a functioning democratic government. Indeed, the deliberative model of democratic governance is often contrasted with the aggregative model, in which laws are determined following a simple aggregation of individual preferences, without any deliberation or rhetorical interaction among those whose preferences are being aggregated. For Grogan and Gusmano, however, the deliberative model is more appealing than the aggregative model because it recognizes the transformative power persuasive argumentation can have on a person’s preferences:

¹⁰ Aristotle. *On Rhetoric: A Theory of Civic Discourse* . Translated by George A. Kennedy. New York: Oxford University Press, 1991. P. 71.

¹¹ Grogan, Colleen M. and Michael K. Gusmano. “Deliberative Democracy and the Poor.” Presented at “The Joint Session of the Political Theory Workshop and the American Politics Workshop,” University of Chicago. 9 May 2001. Retrieved from the Internet 29 October 2003. <http://www.src.uchicago.edu/politicaltheory/APW-Grogan01.pdf>. P. 2.

¹² Thucydides II.40. Ibid. P. 2.

One of the primary concerns about the aggregative model [of democratic lawmaking] is that individual preferences are taken as given. There is neither an account of where preferences come from, nor a belief that they can change. Everyone pursues his or her own self-interest in a competitive political marketplace, and preferences are assumed to be exogenous to the political process. Indeed, preferences are taken as fixed regardless of whether individuals interact with one another in the political process. Thus, under this view, democracy is primarily a mechanism to aggregate individual preferences – usually through voting – and not a process that also shapes and influences individual preferences.

In contrast to the aggregative model, is the view that public opinion should be more than the simple aggregation of individual interests; rather, it should reflect decision making *by discussion* among free and equal citizens. Indeed, at the heart of deliberative democracy is the notion, largely influenced by Habermas (1984; 1990), that preferences will be transformed through the active exchange of ideas – including not just voicing opinions, but *listening*. Through the act of engaging and listening, participants can be persuaded and their thinking transformed.¹³

Underlying Grogan and Gusmano’s analysis of the differences between the aggregative and the deliberative models of democratic lawmaking is the implicit assumption that a person’s reasoned preferences are somehow superior to his or her unexamined proclivities. Such superiority originates in one of two sources, depending on one’s perspective concerning the purpose of democratic government. First, for those who view democratic society as an arena for the selfish pursuit of private goals, in which the common good is borne out of the attendant clash of competing interests, each individual participating in the system would certainly agree that he or she would rather pursue what is truly in his or her self-interest than pursue what merely appears to be in his or her self-interest initially. This perspective shares the Aristotelian

¹³ Grogan, Colleen M. and Michael K. Gusmano. “Deliberative Democracy and the Poor.” Presented at “The Joint Session of the Political Theory Workshop and the American Politics Workshop,” University of Chicago. 9 May 2001. Retrieved from the Internet 29 October 2003. <http://www.src.uchicago.edu/politicaltheory/APW-Grogan01.pdf>. P. 2-3.

assumption that dialectical engagement increases one's knowledge of the issue or subject being debated, an assumption supported by numerous empirical studies.¹⁴

Those who contend that the common good can be achieved through the interplay of conflicting interests (such as James Madison in the "Federalist No. 10"), however, have the burden not only of overcoming the moral and political weaknesses of a system of government based on the machinations of self-interested actors, but also of explaining why deliberation about justice could not in itself lead to the development of a more public-spirited citizenry and a more just system of government.¹⁵ Indeed, empirical evidence indicates that deliberation among randomly selected citizens can promote a sense of public-spiritedness and a concern for the common good theretofore absent among those selected.¹⁶ Thus, for those who view democratic society as an arena for the direct pursuit of the common good, dialectical engagement is not an individual process in which one refines one's understanding of one's private interests, but rather a mechanism for the ongoing creation of an increasingly just polity.¹⁷ In the words of David Estlund:

[If] the public forum allows a person to refine her view of her interests and concerns, it would presumably allow a person to refine her view of justice and the common good as well. Then we should wonder why, if substantive fairness or justice is the goal of the process, public discussion of that would not be more conducive to attaining it than a

¹⁴ Farrar, Cynthia *et al.* "Experimenting with Deliberative Democracy: Effects on Policy Preferences and Social Choice." Presented at "The ECPR Conference," Marburg, Germany. 18-21 September 2003. Retrieved from the Internet 29 October 2003. <http://cdd.stanford.edu/research/papers/2003/experimenting.pdf>. P. 1.

¹⁵ Hamilton, Alexander, James Madison, and John Jay. The Federalist Papers. New York: Penguin Putnam, Inc, 1961. P. 45-52. For a strong critique of Madison's position in the "Federalist No. 10," see: Calhoun, John C. A Disquisition on Government and Selections from the Discourse. Indianapolis: Hackett Publishing Company, Inc, 1995.

¹⁶ Grogan, Colleen M. and Michael K. Gusmano. "Deliberative Democracy and the Poor." Presented at "The Joint Session of the Political Theory Workshop and the American Politics Workshop," University of Chicago. 9 May 2001. Retrieved from the Internet 29 October 2003. <http://www.src.uchicago.edu/politicaltheory/APW-Grogan01.pdf>. P. 6.

¹⁷ Professor Timothy Cook of Williams College, for example, writes that legislative deliberation in a democratic society "should be aimed at the public good, not narrow self-interest, and that legislators must be open to be persuaded by information and arguments rather than sheer bargaining and threats." Cook, Timothy E. "Senators and Reporters Revisited." Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 181.

more limited discourse in which each tries only to form and pursue an enlightened conception of her own interests.¹⁸

An advocate of the position articulated by Estlund, however, has the burden of explaining why the common good ought to be elevated above a person's private interests in the first place. If one contends that the common good is ultimately in everyone's self-interest, he or she is merely advocating a refined version of the first perspective explicated above. On the other hand, if he or she believes that democratic deliberation aimed at the public good creates a more just society than democratic deliberation aimed at the fulfillment of private goals, he or she is consciously or unconsciously presupposing the existence of a transcendent moral standard, and is therefore defending an entirely new perspective altogether; namely, that the legislator's primary purpose is the creation of public laws (*nomoi*) in harmony with the laws of natural justice (*physis*).

The Social and Political Benefits of Rhetorical Deliberation

Although it could be argued that a legislator's true motivation is not the pursuit of Truth, but rather fame or power or some other goal beyond the selfless promotion of the common good, this paper shall rest on an idealized version of the United State Congress. In other words, we shall assume that the true motivation of those serving in Congress is indeed the common good, and not simple reelection, as David Mayhew so convincingly argues.¹⁹ Furthermore, for those who refuse to posit the existence of moral Truth or who deny that a legislator's foremost motivation is the promotion of the common good, it should be noted that there are at least four

¹⁸ Estlund, David. "Democratic Authority: Toward a Philosophical Framework." 17 January 2000. Presented at "Deliberating about Deliberative Democracy," University of Texas, Austin. 4-6 February 2000. Retrieved from the Internet 7 November 2003. <http://www.la.utexas.edu/conf2000/papers/DemocraticAuthority.pdf>. P. 9.

¹⁹ Mayhew writes: "[Reelection] has to be the proximate goal of everyone, the goal that must be achieved over and over if other ends are to be entertained. One former congressman writes, 'All members of Congress have a primary interest in getting re-elected. Some members have no other interest.'" Mayhew, David R. Congress: The Electoral Connection. New Haven: Yale University Press, 1974. P. 16.

additional potential benefits to the deliberative process beyond the creation of a more just society. According to Colleen Grogan and Michael Gusmano, these potential benefits include: 1) the development of greater amounts of tolerance for opposing viewpoints; 2) the creation of public-spiritedness and a concern for the common good; 3) the clarification of individual viewpoints and the development of new solutions to unresolved problems; and 4) the promotion of greater feelings of democratic legitimacy.²⁰ Indeed, Grogan and Gusmano have found empirical evidence supporting the first three of these four potential benefits.²¹ Thus, even if one denies the existence of moral Truth and doubts the purity of the average legislator's motivations, the inherent value of the deliberative process is difficult to dispute.

It is also worth mentioning that recent studies based on a new analytical method called the "Deliberative Poll" have revealed consistent patterns in the effects of rhetorical deliberation among randomly selected citizens asked to discuss pertinent political issues in a closed setting.²² These studies have found that deliberation not only alters the preferences of those who

²⁰ Grogan, Colleen M. and Michael K. Gusmano. "Deliberative Democracy and the Poor." Presented at "The Joint Session of the Political Theory Workshop and the American Politics Workshop," University of Chicago. 9 May 2001. Retrieved from the Internet 29 October 2003. <http://www.src.uchicago.edu/politicaltheory/APW-Grogan01.pdf>. P. 4-6.

²¹ Grogan, Colleen M. and Michael K. Gusmano. "Deliberative Democracy and the Poor." Presented at "The Joint Session of the Political Theory Workshop and the American Politics Workshop," University of Chicago. 9 May 2001. Retrieved from the Internet 29 October 2003. <http://www.src.uchicago.edu/politicaltheory/APW-Grogan01.pdf>. P. 6.

²² Deliberative Polling is a trademark of James S. Fishkin, former Director of the Center for Deliberative Polling at the University of Texas, Austin. See: Fishkin, James S. "Deliberative Polling: Toward a Better-Informed Democracy." Retrieved from the Internet 29 October 2003. <http://cdd.stanford.edu/polls/docs/2003/executivesummary.pdf>; Farrar, Cynthia *et al.* "Experimenting with Deliberative Democracy: Effects on Policy Preferences and Social Choice." Presented at "The ECPR Conference," Marburg, Germany. 18-21 September 2003. Retrieved from the Internet 29 October 2003. <http://cdd.stanford.edu/research/papers/2003/experimenting.pdf>; and Hansen, Kasper Møller. "The Deliberative Poll." Presented at "Elites and Democracy." Copenhagen. 6-8 December 1999. Retrieved from the Internet 29 October 2003. <http://www.sam.sdu.dk/~khm/work/Cos.pdf>. Farrar *et al* describe Deliberative Polling in the following terms: "The basics of the design are these: A random sample is drawn, interviewed, and invited to attend a weekend of deliberations at a common site. Those agreeing to attend are sent carefully balanced briefing materials laying out the major arguments for and against the major policy proposals [to be deliberated]. On-site, they discuss the issues in randomly assigned small groups led by trained moderators and question balanced panels of competing experts or policy-makers in plenary sessions. Then, at the end, they answer the same questions as at the beginning. They receive a financial inducement for participating, and the deliberations are generally televised." Farrar, Cynthia *et al.* "Experimenting with Deliberative Democracy: Effects on Policy

participate, both individually and in the aggregate, but also promotes greater preference structuration.²³ Preference structuration refers to the “systematic alignment of the preferences of all individuals [participating in the deliberative process] along the same shared set of underlying dimensions, also called the ‘issue space.’”²⁴ In other words, deliberation promotes the development of a shared understanding of the choices surrounding a particular issue and the relationships that exist between each available choice. Although such “systematic alignment” does not mean that each person participating in the deliberative process will ultimately agree on how to rank the available options (what Christian List terms “agreement at a substantive level”), it does mean that those participating will likely agree on the nature of the problem at hand and on the consequences of each of the available solutions (what List terms “agreement at a meta-level”).²⁵ Preference structuration, therefore, “refers not to the cognitive organization of individual preferences but to the cohesion or aggregate patterning of preferences *across* individuals.”²⁶ Farrar *et al* write:

[Participants in deliberative polls] do frequently change their views, both individually and in the aggregate, and their preferences do generally become more structured. Both effects, moreover, seem related to learning. The participants typically learn a great deal (Luskin, Fishkin, and Jowell 2002; Luskin, Fishkin, Jowell, and Park 1999; Luskin, Fishkin, and Plane 1999; Fishkin and Luskin 1999; Luskin, Fishkin, MacAllister, Higley, and Ryan 2000), and those who learn the most tend to change their preferences the most (Luskin, Fishkin, and Jowell 2002; Luskin, Fishkin, MacAllister, Higley, and Ryan 2000) and show the greatest increase in preference structuration....

Preferences and Social Choice.” Presented at “The ECPR Conference,” Marburg, Germany. 18-21 September 2003. Retrieved from the Internet 29 October 2003. <http://cdd.stanford.edu/research/papers/2003/experimenting.pdf>. P. 3.

²³ Farrar, Cynthia *et al*. “Experimenting with Deliberative Democracy: Effects on Policy Preferences and Social Choice.” Presented at “The ECPR Conference,” Marburg, Germany. 18-21 September 2003. Retrieved from the Internet 29 October 2003. <http://cdd.stanford.edu/research/papers/2003/experimenting.pdf>. P. 15.

²⁴ *Ibid.* P. 5.

²⁵ List, Christian. “Two Concepts of Agreement.” *PEGS: The Good Society*. 2002. P. 72-79. Quoted in: Farrar, Cynthia *et al*. “Experimenting with Deliberative Democracy: Effects on Policy Preferences and Social Choice.” Presented at “The ECPR Conference,” Marburg, Germany. 18-21 September 2003. Retrieved from the Internet 29 October 2003. <http://cdd.stanford.edu/research/papers/2003/experimenting.pdf>. P. 6.

²⁶ Farrar, Cynthia *et al*. “Experimenting with Deliberative Democracy: Effects on Policy Preferences and Social Choice.” Presented at “The ECPR Conference,” Marburg, Germany. 18-21 September 2003. Retrieved from the Internet 29 October 2003. <http://cdd.stanford.edu/research/papers/2003/experimenting.pdf>. P. 5.

[These results] confirm that opportunities for serious, balanced discussion with heterogeneous fellow citizens can permit people to learn about the issues, weigh competing arguments, reflect on their values in relation to given policies, reconsider their views, and arrive at a shared understanding of the criteria for preferring one alternative to another.²⁷

Thus, empirical evidence supports both the presumed efficacy of rhetorical deliberation and the discursive legitimacy of the democratic process. Indeed, rhetorical deliberation not only creates a “common citizenship” through the development of a single national discourse via the structuration of individual preferences, but also allows for the development of new solutions to difficult problems and to the creation of a more tolerant, public-spirited, and just society.²⁸ Although non-deliberative models of democratic decision-making exist, dialectical engagement has served as the rhetorical foundation of every democratic polity since the early democracies of antiquity, and whether or not one accepts the existence of moral Truth, the relationship between rhetorical deliberation and justice has been the defining element of Western political thought from Socrates and Aristotle through the authors of the Constitution to the deliberative democrats of today.

Rhetorical Deliberation in the United States Senate

Despite dialectic’s centrality to the democratic process, and despite a resurgent interest in theories of deliberative democracy, “there is a stark absence of empirical work” to buttress competing academic arguments.²⁹ In the words of Colleen Grogan and Michael Gusmano:

²⁷ Ibid. P. 1, 20.

²⁸ Hansen, Kasper Møller. “The Deliberative Poll.” Presented at “Elites and Democracy.” Copenhagen. 6-8 December 1999. Retrieved from the Internet 29 October 2003. <http://www.sam.sdu.dk/~kkm/work/Cos.pdf>. P. 4.

²⁹ Grogan, Colleen M. and Michael K. Gusmano. “Deliberative Democracy and the Poor.” Presented at “The Joint Session of the Political Theory Workshop and the American Politics Workshop,” University of Chicago. 9 May 2001. Retrieved from the Internet 29 October 2003. <http://www.src.uchicago.edu/politicaltheory/APW-Grogan01.pdf>. P. 17. See also: Lascher, Edward L. “Assessing Legislative Deliberation: A Preface to Empirical

“While much good theory has been written in recent years, there is very little empirical work to assess their legitimacy.”³⁰ Moreover, the quality of political debate both within American society, generally, and within the United States Congress, specifically, is seldom questioned, and no attempts have been made to quantify the quality of Congressional debate for comparative purposes.³¹

Even though there is a “stark absence of empirical work” regarding the quality of legislative deliberation, and even though few attempts have even been made to develop a framework for assessing rhetorical deliberation for comparative purposes, it is often assumed, by both political theorists and senators alike, that the quality of debate in the United States Senate has declined precipitously over the course of American history. As Barbara Sinclair notes in The Transformation of the U.S. Senate: “Not only is the Senate no longer the world’s greatest deliberative body; some senators say it is not much of a deliberative body at all.”³² Although it is worth emphasizing that no empirical evidence has ever been proffered supporting the various claims that have been made regarding the historical decline of Senate deliberation, there are at least four reasons – in addition to the anecdotal evidence offered by many of the Senate’s own senior members – why such claims are in all likelihood correct.³³

Analysis.” Legislative Studies Quarterly. Volume XXI, Number 4. Ed. Wayne L. Francis, John R. Hibbing, and Gerhard Loewenberg. Published by the Comparative Legislative Research Center of the University of Iowa. November 1996. P. 501-502.

³⁰ Grogan, Colleen M. and Michael K. Gusmano. “Deliberative Democracy and the Poor.” Presented at “The Joint Session of the Political Theory Workshop and the American Politics Workshop,” University of Chicago. 9 May 2001. Retrieved from the Internet 29 October 2003. <http://www.src.uchicago.edu/politicaltheory/APW-Grogan01.pdf>. P. 17.

³¹ Lascher, Edward L. “Assessing Legislative Deliberation: A Preface to Empirical Analysis.” Legislative Studies Quarterly. Volume XXI, Number 4. Ed. Wayne L. Francis, John R. Hibbing, and Gerhard Loewenberg. Published by the Comparative Legislative Research Center of the University of Iowa. November 1996. P. 502.

³² Sinclair, Barbara. The Transformation of the U.S. Senate. Baltimore: The Johns Hopkins University Press, 1989. P. 2.

³³ For a prime example of a senior senator’s critique of the decline of deliberation in the Senate, see: Byrd, Robert. “The Emperor Has No Clothes.” Senate Floor Remarks. 17 October 2003. Retrieved from the Internet 27 October 2003. <http://superstringtheory.com/forum/futureboard/messages9/150.html>.

First, the gradual commercialization of political journalism in the 1820s and the 1830s caused senators to start speaking to mass audiences rather than to each other for the first time in the institution's history.³⁴ Until the 1820s, the "news media system in the United States was organized [first] by political factions, then by parties."³⁵ Within a news media system in which journalists were aligned with senators through political loyalties (and even through federal patronage), senators were able to speak extemporaneously on the Senate floor while providing carefully prepared speeches for party newspaper reporters for public dissemination. In the words of Thomas Leonard: "Early in the nineteenth century political leaders had what they would never again enjoy: separate worlds for what they said and what they published. In the oral world they could be just as accountable and flexible as they chose to be."³⁶ Indeed, commercial journalists were initially not even allowed to sit in the Senate viewing gallery. Once independent reporters were granted access to view Senate floor proceedings in 1841, however, a significant change occurred in the nature of the Senate's deliberations. Whereas senators were previously free to speak to each other earnestly without the fear of having their arguments published, senators would henceforth have to speak with a much larger, though physically absent, audience in mind.

Timothy Cook writes:

Commercial forms of journalism allowed senators such as Charles Sumner (R-Mass.) to reach larger audiences than his fellow senators alone with his carefully prepared and uncompromising language. Whereas predecessors like [Senator Daniel] Webster spoke spontaneously and revised remarks for publication, Sumner painstakingly prepared speeches that he read in the Senate: 'More than any senator before him, Sumner turned discussion on vital issues into a performance that closed off exchanges of views.'

These mid-nineteenth century examples, then, show a shift in the content and style of deliberation. Larger and physically absent audiences took priority over those present in

³⁴ Cook, Timothy E. "Senators and Reporters Revisited." *Esteemed Colleagues: Civility and Deliberation in the U.S. Senate*. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 167-172.

³⁵ *Ibid.* P. 168.

³⁶ Leonard, Thomas C. *The Power of the Press: The Birth of American Political Reporting*. New York: Oxford University Press, 1986. P. 72.

the Senate chamber. Collective development of ideas and compromises in free-form discussion were displaced by hard-and-fast rhetoric aimed at newspaper publicity. As definitions of news changed, so too did the opportunities for and constraints on deliberation.³⁷

Once Senate floor proceedings were opened to commercial journalists, senators not only directed their remarks to a new audience, but also fundamentally changed the style and the content of their arguments. As the news media's production values began to seep into the rhetorical strategies of our nation's elected officials, the quality of Senate deliberation suffered.

Cook continues:

[Commercial journalism] is ill-prepared to encourage communication that would seem to be optimal for deliberation. Complexity gives way to simplicity; nuanced arguments get shrunk into soundbites; abstract programs are discussed in terms of individual personal anecdotes. Above all, it becomes difficult to focus on issues when reporters are most interested in following the game of politics from day to day, as long has been the case with campaigns and is increasingly so between elections in Washington as well.... The news media's widely agreed-upon production values do not match up well with focusing on substantive arguments, with listening to and considering alternative possibilities, and with attending to the public good.³⁸

Moreover, advances in communications technology have only compounded the problem, and the addition of permanent television cameras to the Senate gallery in 1986 has only exacerbated the deleterious effects of commercialized journalism on Senate deliberation.³⁹

³⁷ Cook, Timothy E. "Senators and Reporters Revisited." *Esteemed Colleagues: Civility and Deliberation in the U.S. Senate*. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 172. Internal quotation from: Leonard, Thomas C. *The Power of the Press: The Birth of American Political Reporting*. New York: Oxford University Press, 1986. P. 84.

³⁸ Cook, Timothy E. "Senators and Reporters Revisited." *Esteemed Colleagues: Civility and Deliberation in the U.S. Senate*. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 179-180, 181-182. See also: Jamieson, Kathleen Hall and Paul Waldman. *The Press Effect: Politicians, Journalists, and the Stories that Shape the Political World*. New York: Oxford University Press, 2003.

³⁹ In the words of Timothy Cook: "Television tends to magnify the preexisting tendencies of American newspapers that stem from the production values associated with quality journalism. The individualism of newspaper accounts is heightened by the preference of television for anecdotal personal experience. The fragmentary, episodic quality of newspaper coverage, derived from its focus on a wide variety of topics over a length of time, is exacerbated by television's severe time constraints. The gravitation of newspapers toward the concrete over the abstract is reinforced by television's search for visual images that will help to explain the reporter's spoken words. Newspapers' preferences for narrative and spectacle are stronger still when audiences are supposed to be kept interested enough to maintain the 'flow' from the television program preceding the news to the one after it. And so

Second, the ideological homogenization and polarization of America's two primary political parties over the course of the last few decades of the twentieth century has discouraged members of opposing parties from engaging in dialectical deliberation.⁴⁰ In other words, as the Republican and Democratic parties have grown "more cohesive internally and farther apart externally," obstinate position-taking and party-line voting have replaced the rational arguments and dialectical appeals of the past.⁴¹ Indeed, whereas only 35% of Senate roll call votes divided a majority of Senate Republicans from a majority of Senate Democrats in the early 1970s, 69% percent of Senate roll call votes in 1995 resulted in a division of party majorities.⁴² In the words of Barbara Sinclair: "Partisan polarization has made participation through their parties more attractive to senators than it was when the parties were more heterogeneous and there was less ideological distance between them."⁴³

The decline of deliberation resulting from the homogenization and polarization of America's primary political parties has been exacerbated by the gradual replacement of the

forth." Cook, Timothy E. "Senators and Reporters Revisited." Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 172. See also: Seib, Philip. Going Live: Getting the News Right in a Real-Time, Online World. Lanham, Maryland: Rowman & Littlefield Publishers, Inc, 2001.

⁴⁰ See, for example: Davidson, Roger H. and Walter J. Oleszek. Congress and Its Members – Eighth Edition. Washington, DC: CQ Press, 2002. P. 38-39; Uslander, Eric M. "Is the Senate More Civil than the House?" Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 42, 45; Sinclair, Barbara. The Transformation of the U.S. Senate. Baltimore: The Johns Hopkins University Press, 1989. P. 63; Davidson, Roger H. and Colton C. Campbell. "The Senate and the Executive." Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 196-197; and Ornstein, Norman J. "Civility, Deliberation, and Impeachment." Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 233.

⁴¹ Davidson, Roger H. and Colton C. Campbell. "The Senate and the Executive." Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 197. In the words of Burdett Loomis: "Position-taking appears to trump the interpersonal communication that constitutes the basis for deliberation." Loomis, Burdett A. "Civility and Deliberation: A Linked Pair?" Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 7.

⁴² Uslander, Eric M. "Is the Senate More Civil than the House?" Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 42.

Senate's shrinking number of "deliberative centrists" with "deal-making centrists" such as Senator John Breaux of Louisiana.⁴⁴ Coupled with the polarization and homogenization of the parties, the ascension of "deal-making centrists" within the Senate's senior ranks sends "the message that deliberation... is less possible than compromise among position-takers, which requires only the bare minimum of civil discussion."⁴⁵

Third, the Senate's burgeoning workload over the course of the last fifty years has resulted in a drastic reduction in the amount of time allocated to the pieces of legislation that make it to the Senate floor.⁴⁶ Roger Davidson and Walter Oleszek write:

Congress's workload – once limited in scope, small in volume, and simple in content... has just about doubled since the 1950s. Legislative business has expanded in scope and complexity as well as sheer volume. Today's Congress grapples with many issues that once were left to states or localities or were considered entirely outside the purview of government activity. Moreover, legislation tends to be more complex than it used to be. The average public bill of the late 1940s was two and a half pages long; by the late 1990s it ran to more than eighteen pages.⁴⁷

As a result of Congress's ever-expanding workload, the amount of time spent deliberating issues in both houses of Congress has rapidly declined. Long-term Congressman and former Speaker of the House Joseph W. Martin once said the following:

In my early years in Congress the main issues were few enough so that almost any conscientious member could with application make himself a quasi-expert at least. In the complexity and volume of today's legislation, however, most members have to trust

⁴³ Sinclair, Barbara. "Individualism, Partisanship, and Cooperation in the Senate." Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 63.

⁴⁴ Loomis, Burdett A. "Civility and Deliberation: A Linked Pair?" Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 8.

⁴⁵ *Ibid.* P. 8.

⁴⁶ See, for example: Davidson, Roger H. and Walter J. Oleszek. Congress and Its Members – Eighth Edition . Washington, DC: CQ Press, 2002. P. 29-30; Sinclair, Barbara. The Transformation of the U.S. Senate. Baltimore: The Johns Hopkins University Press, 1989. P. 134-135; and Oppenheimer, Bruce I. "Constituency Size and the Strategic Behavior of Senators." Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 155.

⁴⁷ Davidson, Roger H. and Walter J. Oleszek. Congress and Its Members – Eighth Edition . Washington, DC: CQ Press, 2002. P. 29-30.

somebody else's word or the recommendation of a committee. Nowadays bills, which thirty years ago would have been thrashed out for hours or days, go through in ten minutes.⁴⁸

In addition to a reduction in the amount of time available for deliberation over each of the numerous issues that comes before the Senate, Congress's expanding workload has also caused a substantial diminishment in the number of senators who attend Senate debates, both on the Senate floor and in committee and subcommittee meetings. Indeed, senators are typically too busy to spend long periods of time on the floor of the Senate, and conflicting committee meeting schedules only allow senators to attend those meetings in which they deem their presence to be essential.⁴⁹ In the words of Davidson and Oleszek: "The days of a single morning committee meeting and time to witness an entire afternoon's floor proceedings have gone the way of the manual typewriter. Conflicting committee sessions, snatches of floor deliberation, and repeated roll calls are now the order of the day."⁵⁰

Finally, the decline of comity in Congress has presumably further undermined the quality of Senate deliberation. Comity has been considered "a necessary, if not sufficient condition for

⁴⁸ Donovan, Robert J. My First Fifty Years in Politics. New York: McGraw-Hill, 1960. P. 49-50. Quoted in: Davidson, Roger H. and Walter J. Oleszek. Congress and Its Members – Eighth Edition. Washington, DC: CQ Press, 2002. P. 29. Although one might assume that the large amount of time previously devoted to deliberation in the Senate has not just simply disappeared, but has rather been moved to alternate settings, such as committee meetings and the Senate dining room, all existing evidence points to the contrary. Indeed, committee and subcommittee meetings are poorly attended, and senators themselves indicate that they rarely interact – sometimes even for days at a time. See, for example: Sinclair, Barbara. The Transformation of the U.S. Senate. Baltimore: The Johns Hopkins University Press, 1989. P. 98-104, 153-156; and Baker, Ross. "Constitutional Cohabitation." Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 23.

⁴⁹ Sinclair, Barbara. The Transformation of the U.S. Senate. Baltimore: The Johns Hopkins University Press, 1989. P. 153. It is worth noting that the perpetual absence of senators on the Senate floor has wasted hundreds of hours of Senate business, compounding the time pressures senators face. Indeed, during "the first nine months of the 99th Congress, the Senate spent 247 hours – 23 percent of its time in session – in quorum calls." Ibid. P. 134. Although quorum calls are regularly used as a political tactic rather than as a genuine effort to gain the number of senators necessary to conduct business, in the words of former Senate Majority Leader Howard Baker, the Senate has nonetheless "wasted hours upon hours, tens of hours in the Senate waiting for senators to arrive on the floor to cast their vote." Congressional Record. 10 June 1983. S8223. Quoted in: Sinclair, Barbara. The Transformation of the U.S. Senate. Baltimore: The Johns Hopkins University Press, 1989. P. 134.

deliberation” since Plato, and the notion that dialectical engagement requires both respect for the person with whom one is speaking and a certain degree of receptiveness toward his or her arguments is simply irrefutable.⁵¹ The level of comity in the Senate, however, has declined noticeably over the last fifty years, with the increasing willingness of senators to use filibusters and to ignore long-standing Senate norms serving as indicators of this decline.⁵² Although many factors have undoubtedly contributed to the rise of incivility in Congress, including the polarization of the parties and the commercialization of political journalism, it has been theorized that the decline of civility among our nation’s elected representatives can be attributed to a more general decline of civility in American society. In the words of Eric Uslaner:

The nasty mood in the Congress reflects the growing hostility in the country. Since the 1970s, American society has become far more contentious than it used to be. Witness the explosion of litigation rates, the frequency of air rage and road rage, the popularity of “shock jocks” on the radio, and the way talk show guests attack each other on television.... Congress isn’t insulated from the public. Instead it is first and foremost a representative institution. [President Woodrow] Wilson was right: the members of Congress take their cues from the public. As the public has become less civil, so has the Congress.⁵³

Assessing the Quality of Senate Deliberation

Although the commercialization of political journalism, the polarization and homogenization of America’s two primary political parties, the expansion in Congress’s

⁵⁰ Davidson, Roger H. and Walter J. Oleszek. Congress and Its Members – Eighth Edition. Washington, DC: CQ Press, 2002. P. 29-30.

⁵¹ Loomis, Burdett A. “Civility and Deliberation: A Linked Pair?” Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 2.

⁵² See: Sinclair, Barbara. The Transformation of the U.S. Senate. Baltimore: The Johns Hopkins University Press, 1989; Uslaner, Eric M. “Is the Senate More Civil than the House?” Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 32-55; and Sinclair, Barbara. “Individualism, Partisanship, and Cooperation in the Senate.” Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 59-77

⁵³ Uslaner, Eric M. “Is the Senate More Civil than the House?” Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 42.

workload, and the general decline of comity in Congress have all undoubtedly affected the quality of deliberation in the Senate, it is worth reiterating that an empirical study comparing the quality of rhetorical deliberation in the Senate across congressional sessions has never been conducted.⁵⁴ Moreover, few attempts have been made to develop a framework for assessing the quality of legislative deliberation for comparative purposes, either between deliberative bodies or within a single deliberative body over time. Edward L. Lascher writes: “[Political scientists] are presently ill-prepared to assess legislative deliberation in practice, let alone to make recommendations for institutional reform.”⁵⁵

A conspicuous exception to this lack of scholarship regarding the quality of legislative deliberation is an essay written by Lascher in the November 1996 edition of Legislative Studies Quarterly, a political science journal published by the Comparative Legislative Research Center at the University of Iowa.⁵⁶ Lascher’s essay, entitled “Assessing Legislative Deliberation: A Preface to Empirical Analysis,” establishes a general framework for assessing the role played by deliberation in democratic lawmaking. In creating a conceptual framework for assessing the role of legislative deliberation, Lascher examines three aspects of the deliberative process: the conditions that promote deliberation, the effectiveness of deliberation (including both the extent and the quality of deliberation), and the social consequences of deliberation. Lascher’s conceptual framework for assessing the *role* of legislative deliberation thus includes criteria for assessing the *quality* of legislative deliberation, albeit within the context of a proposal for a much larger analytical study.

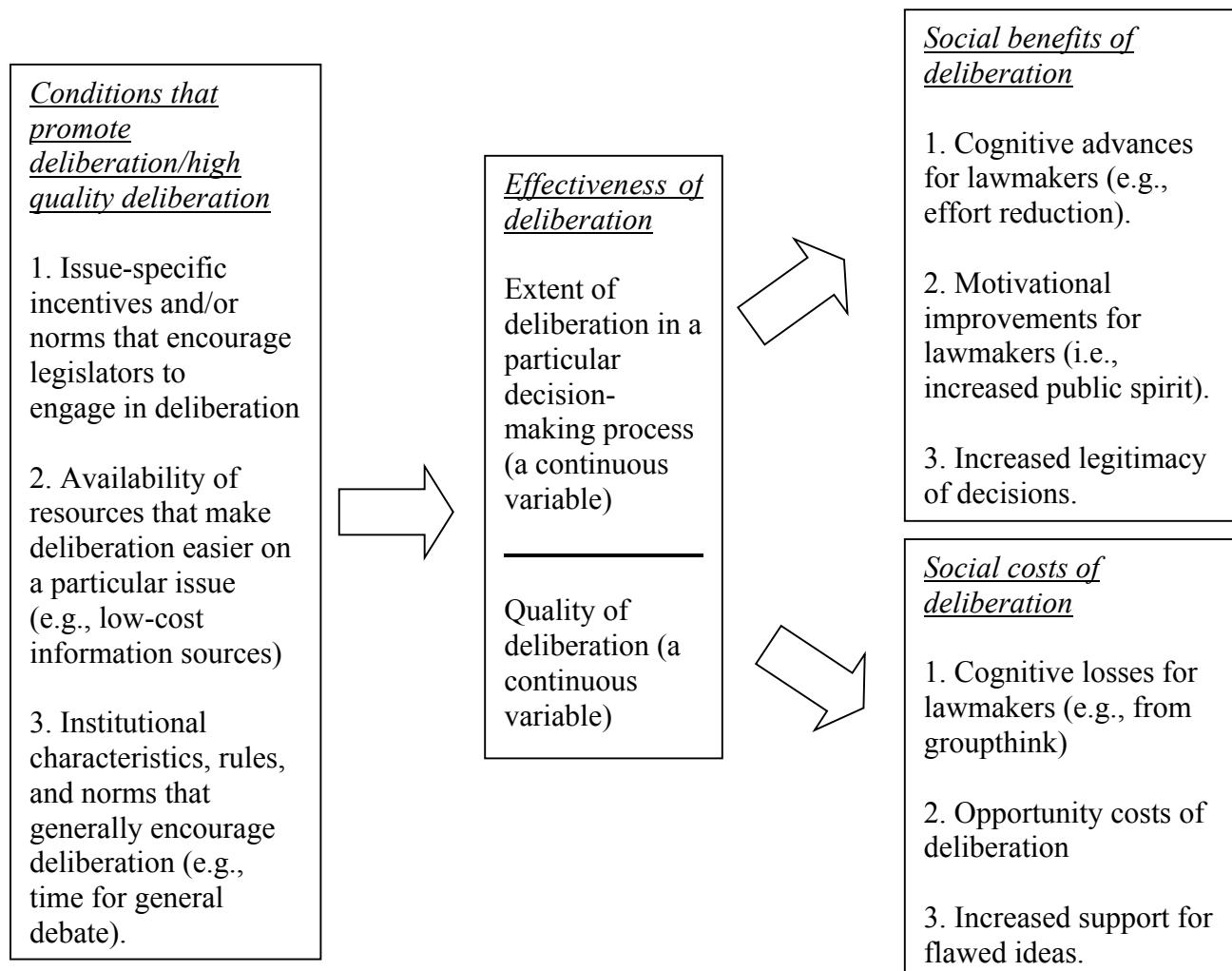
⁵⁴ Lascher, Edward L. “Assessing Legislative Deliberation: A Preface to Empirical Analysis.” Legislative Studies Quarterly. Volume XXI, Number 4. Ed. Wayne L. Francis, John R. Hibbing, and Gerhard Loewenberg. Published by the Comparative Legislative Research Center of the University of Iowa. November 1996. P. 502.

⁵⁵ Ibid.

⁵⁶ Ibid., P. 501-519.

As can be seen in the outline in Figure 1 below, Lascher’s conceptual framework for assessing the role of legislative deliberation contains two criteria for determining the effectiveness of deliberative rhetoric: the extent of deliberation and the quality of deliberation. Although it would seem logical to treat the time spent deliberating an issue as a factor in determining deliberative quality, Lascher separates the quality of deliberation and the extent of deliberation into two distinct variables. Although we will eventually merge these two variables in single set of criteria for assessing deliberative quality, it will be helpful to first examine Lascher’s proposed methodology.

FIGURE 1
A Conceptual Framework for Assessing the Role of Deliberation in Legislatures⁵⁷



In developing a method for measuring the effectiveness of legislative deliberation, Lascher suggests three indicators for determining the extent of deliberation on any given legislative decision. These indicators are as follows:

Indicator 1: deliberative hearing(s). One or more public hearings are held at the committee stage, with the extent to which they meet the standard of a deliberative hearing to be determined using the following sub-indicators.

Sub-indicator A: attendance. The hearings are well attended by committee members (participation being a prerequisite to deliberation).

Sub-indicator B: variety of perspectives. The hearings include participants with a variety of perspectives. Evidence of exclusion of certain views (e.g., those of people adversely affected by legislation) would lead to a lower assessment.

Sub-indicator C: framing of arguments. Arguments are framed in terms of some conception of the public good (e.g., utilitarian arguments about benefits to the average citizen; deontological arguments about protecting fundamental rights).

Sub-indicator D: presenting information. Participants are able to present information (e.g., outside reports) relevant to their arguments. Interviews might be used to determine the extent of such opportunity.

Sub-indicator E: opportunity for critique. Participants are able to critique each others' arguments and respond to such criticism. Potentially interested participants might be asked about the existence of such opportunity.

Sub-indicator F: interaction among participants. Legislators and others show signs of responding to arguments (e.g., referring back to points made by others earlier in the hearing).

Indicator 2: thorough floor debate. If the issue reaches the legislative floor, thorough floor debate is conducted. Thoroughness generally could be determined using the six sub-indicators above, modified to meet the different circumstances (e.g., nonlegislators do not participate in the discussion).

Indicator 3: subjective assessments of informal deliberation. Participants themselves would be asked about the extent of informal deliberation [in private conversations, over the telephone, etc.] on any specific issue.⁵⁸

Even though many of the indicators and sub-indicators listed above would seem more suited for an assessment of the *quality* of legislative deliberation than for an assessment of the

⁵⁷ Ibid., P. 504.

⁵⁸ Ibid., P. 509.

extent of legislative deliberation, Lascher lists only one factor for determining deliberative quality: namely, the relative presence (or absence) of logical fallacies.⁵⁹ It is certainly conceivable that a group of scholars watching the exchange of arguments on the Senate floor, either from the viewing gallery or on CSPAN-2, could keep record of the number of logical fallacies that arose during any given period of time. A measurement of the quality of deliberation in the Senate focusing entirely on the rate of occurrence of logical fallacies, however, is lacking in two regards. First, such a measurement could not be based on a review of past editions of the Congressional Record, as senators regularly alter the content of the Congressional Record for personal, political, and electoral purposes. In other words, the debates recorded in the Congressional Record may or may not accurately reflect the true exchange of arguments that took place on the Senate floor – if such an exchange of arguments even occurred, which cannot be guaranteed, as senators occasionally add entire speeches to the Congressional Record without actually presenting them in the Senate. It would, therefore, be impossible to determine the true number of logical fallacies that occurred in the Senate during any session prior to 1986 – when television cameras were allowed to record Senate proceedings for the first time. Although debates recorded in old editions of the Congressional Record could easily be used as an imperfect substitute for a true record of the debates that actually took place, the lack of an accurate record renders true historical comparison impossible.

Second, it seems more appropriate to base an assessment of the quality of Senate deliberation on the number of *uncorrected* logical fallacies that occur during the course of a Senate debate rather than on a simple, undifferentiated tally of all the logical fallacies that occur, regardless of whether or not they are corrected at a later point in the debate. Indeed, it would seem to be one of dialectic's primary functions to reveal and discredit fallacious arguments, a

⁵⁹ Ibid., P. 510-511.

consideration Lascher fails to make. Moreover, it could even be argued that the very purpose of rhetorical deliberation is to expose fallacious arguments and to discredit them through appeals to reason. If this is the case, an assessment of Senate deliberation based both on the number of logical fallacies that are corrected (a positive indicator) and the number of logical fallacies that are left uncorrected (a negative indicator) would be more accurate than an assessment based solely on the total number of logical fallacies that occur (a mixed indicator).

In creating a conceptual framework for assessing the quality of Senate deliberation, therefore, it would seem proper to replace Lascher's single measurement for determining deliberative quality – the total number of logical fallacies – with a slightly more complex measurement based on two variables: the number of corrected logical fallacies and the number of uncorrected logical fallacies. Furthermore, it would seem prudent to collapse the two categories of variables proposed by Lascher into a single list, thereby breaking down false distinctions between the “extent” and the “quality” of legislative deliberation. Thus, in order to establish a single set of criteria for assessing the quality of Senate deliberation, we would merely have to combine the three indicators Lascher proposes for determining the extent of legislative deliberation with two additional indicators for determining the logical integrity of the arguments that are made:

Indicator 4: movement toward resolution. The number of logical fallacies that are corrected during the course of the debate, at the sub-committee, committee, and chamber levels; and

Indicator 5: logical impurity. The number of logical fallacies that are left uncorrected during the course of the debate, at the sub-committee, committee, and chamber levels.⁶⁰

⁶⁰ It is important to note that the fifth indicator, logical impurity, is a negative indicator unlike the other four. Thus, when assessing the quality of Senate deliberation, the system of quantification utilized would have to accommodate this alternative approach. It is extremely important, however, that the fourth and the fifth indicators be kept separate, as they serve as indicators of qualitatively different rhetorical phenomena. Whereas the number of corrected logical fallacies measures dialectical progress, the number of uncorrected logical fallacies measures the strength of the arguments being made.

Utilizing these five indicators, it becomes possible to develop a system of quantification that would allow us to conduct empirical studies into the quality of deliberation in both our federal and our state legislative bodies. Such studies would enable us to track the quality of American political discourse over time and to test various reforms designed to enhance the quality of American legislative deliberation.

Conclusion: Senate Deliberation and the Rhetorical Foundations of Democracy

Considering the rhetorical foundations of the United States government and the centrality of dialectical deliberation to the democratic process, it behooves us to safeguard the integrity of American political discourse. Indeed, the rule of law gains its authority from the discursive legitimacy of the democratic process, and dialectical engagement has been considered a prerequisite for just lawmaking in every democratic society in the history of western civilization. Various trends in American politics, however, including the commercialization of political journalism, the polarization and homogenization of America's two primary political parties, the expansion in Congress's workload, and the general decline of comity in Congress, have led many scholars to speculate that the quality of rhetorical deliberation in the United States Congress is in decline.

Such speculation is especially disturbing when it is in regards to the United States Senate, a body specifically designed to elevate deliberation and careful reasoning above the clamor of electoral politics and constituent demands. It is thus incumbent upon us to develop a framework for assessing the quality of deliberation in the United States Senate so that we might better understand the true depth of our current rhetorical crisis – if such a crisis even exists. Although a thorough empirical study has never been conducted, anecdotal evidence seems to suggest that the

conditions that foster deliberation in the Senate are receding with the passage of time, leading one congressional scholar to question the Senate's "capacity to generate coherent, productive dialogues on major issues."⁶¹ Such doubts strike at the very foundation of the democratic process, sparking questions that must be addressed if we are to preserve the legitimacy of the American political system: Are democratic institutions incapable of meeting the pressures and the needs of a postmodern society? Has political discourse advanced at a rate incommensurate with the rate of social progress? Have our governmental institutions lost their purpose in an altered societal context? Has what was once described as the world's greatest deliberative body, the United States Senate, become nothing more than the shattered remnants of an impracticable ideal? In order to answer these questions, we need to create a conceptual framework for assessing the quality of rhetorical deliberation in the United States Senate.

⁶¹ Loomis, Burdett A. "Civility and Deliberation: A Linked Pair?" Esteemed Colleagues: Civility and Deliberation in the U.S. Senate. Ed. Burdett A. Loomis. Washington, DC: The Brookings Institute Press, 2000. P. 2.

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